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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, <i>et al.</i> ,	§	Chapter 11
	§	
Debtors.	§	Jointly Administered
	§	

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**MOTION FOR ORDER AUTHORIZING ASARCO LLC  
TO ENTER INTO CONTRACT FOR 2007 CLEANING  
AND DEMOLITION PROJECT AND CAMU-PHASE 2  
CELL PROJECT IN EAST HELENA, MONTANA**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN TWENTY (20) DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREED OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE RICHARD S. SCHMIDT, UNITED STATES BANKRUPTCY JUDGE:

ASARCO LLC ("ASARCO" or the "Debtor") respectfully files this Motion for Order Authorizing ASARCO LLC to Enter into Contract for 2007 Cleaning and Demolition Project and CAMU-Phase 2 Cell Project in East Helena, Montana (the "Motion").

**PARTIES, JURISDICTION, AND VENUE**

1. On August 9, 2005, ASARCO filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this Court. On April 11, 2005, several of ASARCO's wholly-owned direct or indirect subsidiaries (the "Asbestos

Subsidiary Debtors<sup>1</sup>) filed their voluntary petitions in this Court (the "Subsidiary Cases"). Later in 2005, several of ASARCO's other wholly-owned direct or indirect subsidiaries (the "2005 Subsidiary Debtors"<sup>2</sup>) filed similar petitions for relief in this Court. Further, on December 12, 2006, three more ASARCO subsidiaries (the "2006 Subsidiary Debtors"<sup>3</sup>) filed similar petitions for relief with this Court (collectively with ASARCO, the Asbestos Subsidiary Debtors and the 2005 Subsidiary Debtors, the "Debtors"). The Debtors' cases are collectively referred to as the "Reorganization Cases."

2. The Debtors remain in possession of their property and are operating their businesses as Debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. On April 27, 2005, an official committee of unsecured creditors was appointed in the Subsidiary Cases. An official committee of unsecured creditors has also been appointed in ASARCO's case (the "ASARCO Committee"). No trustee or examiner has been appointed in any of the Reorganization Cases.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This Court may hear and determine this Motion under the standing order of reference issued by the United States District Court for the Southern District of Texas under 28 U.S.C. § 157. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b). Venue of this

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<sup>1</sup> The Asbestos Subsidiary Debtors consist of the following five entities: Lac d'Amiante du Québec Ltée (f/k/a Lake Asbestos of Quebec, Ltd.); Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc. (f/k/a/ Cement Asbestos Products Company); and Cement Asbestos Products Company.

<sup>2</sup> The 2005 Subsidiary Debtors are: ASARCO Consulting, Inc.; Encycle, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations Inc.; AR Sacaton, LLC, an Arizona limited liability company; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; Government Gulch Mining Company, Limited; and Salero Ranch, Unit III, Community Association, Inc. Encycle/Texas, Inc. also filed a petition for relief; but its case, which was later converted to a chapter 7 case, is being administered separately.

<sup>3</sup> The 2006 Subsidiary Debtors are: Southern Peru Holdings, LLC; AR Sacaton, LLC, a Delaware limited liability company; and ASARCO Exploration Company, Inc.

proceeding is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 363 of the Bankruptcy Code.

#### **RELIEF REQUESTED**

4. The Debtor seeks authorization pursuant to section 363(b)(1) of the Bankruptcy Code to enter into a contract for the 2007 Cleaning and Demolition Project and the CAMU-Phases 2 Cell Project at the East Helena, Montana lead smelter plant, as described in greater detail below, with the entity submitting the best and lowest bid, as determined by the Debtor in consultation with the ASARCO Committee.

#### **BRIEF BACKGROUND**

5. ASARCO has operated a lead smelter plant in East Helena, Montana since 1888, and continues to own the plant. Prior to its bankruptcy filing, ASARCO entered into Consent Decrees with the Environmental Protection Agency and the Montana Department of Environmental Quality, which governs the process by which materials are to be removed, stored, and properly disposed or recycled from certain process units located at the East Helena plant. Over the last three years, ASARCO has achieved substantial success in accomplishing these goals, but not all of the tasks are complete.

6. The 2007 Cleaning & Demolition Project and CAMU-Phase 2 Cell Project will take place at the East Helena plant in 2007, and will be awarded as one contract. Cleaning and demolition will occur within the plant boundaries, while construction of the Corrective Action Management Unit ("CAMU") Phase 2 Cell, which will be used for disposal of waste and demolition debris, is located just across a county road and a railroad track from the facility. The CAMU-Phase 2 Cell is a RCRA Class C type of landfill facility. The project will involve construction of the landfill cell, cleaning and demolition of plant structures, transport of waste

materials and demolition debris to the landfill, placement and compaction of materials in the landfill, and closure of the landfill.

7. The 2007 Cleaning & Demolition Project is first and foremost a materials removal project, followed by a demolition project. Protection of human health and the environment is the prime objective. With this purpose in mind, the contractor must implement techniques and material removal procedures to achieve the cleaning criteria before demolition takes place. Once the cleaning process is complete and meets the standards set forth in the Consent Decree, demolition will be allowed to take place. The specific cleaning techniques selected by the contractor will be designed to minimize environmental and employee exposure to hazardous materials, while meeting the goals and objectives of the Consent Decree.

8. The CAMU-Phase 2 Cell construction project will include all activities necessary to safely construct a RCRA type C landfill cell; load, transport, place and compact waste materials and construction debris in the cell; provide closure of the cell at the end of the construction season; and construct associated surface water and erosion controls.

9. ASARCO lacks the manpower and other resources to undertake these projects itself; therefore, it concluded that the only viable method for completing the projects in accordance with the Consent Decrees' requirements was to hire a contractor.

10. On January 25, 2007, ASARCO submitted an invitation to bid to the following eight entities: (a) ENTACT Environmental Services; (b) Envirocon Inc.; (c) DEMCO; (d) URS Corporation; (e) Clean Harbors Environmental Services; (f) Brandenburg; (g) PSC Environmental Services; and (h) D.H. Griffin of Texas, Inc. ASARCO has scheduled a mandatory pre-bid conference on February 13, 2007, and has asked for bids to be submitted by March 2, 2007. A Bid Form and the form of contract for the work have been provided to the

potential bidders as part of the bid solicitation materials. ASARCO anticipates that the projects will be completed by October 15, 2007.

11. ASARCO believes that each of the eight entities that have been invited to submit bids are well-qualified to do the work. They meet the criteria for being environmental contractors, are familiar with EPA and OSHA requirements, have past experience with ASARCO environmental work, and have good reputations in the community. Given that all of the potential bidders are qualified to perform the work, the main components that ASARCO will use to evaluate the bids are the bidders' proposed price and construction schedule. Once bids are received, ASARCO will consult with the ASARCO Committee to select the best and lowest bid.

12. In order to get the work underway as quickly as possible, ASARCO asks that the Court authorize it to enter into a contract to perform the work with the entity that submits the best and lowest bid, as determined by ASARCO, in consultation with the ASARCO Committee. ASARCO also requests that it be authorized to order extra work or initiate changes in the work by altering, adding to, or deducting from the work, in consultation with the ASARCO Committee, without need of additional Court order.

#### **LAW AND ARGUMENT**

13. Section 363(b)(1) of the Bankruptcy Code permits a debtor in possession, after notice and a hearing, to use, sell or lease property of the estate other than in the ordinary course of its business.

14. In the exercise of its business judgment, ASARCO seeks authority to enter into a contract with the entity that submits the best and lowest bid, as determined by the Debtor, in consultation with the ASARCO Committee. The Debtor believes that entry into a contract with the successful bidder is necessary to complete the work, is in the interests of public health and safety, and is in the best interests of ASARCO's estate.

**CERTIFICATE OF SERVICE**

15. In compliance with Bankruptcy Local Rule 9013(f) and contemporaneously with this pleading, the Debtor has filed as a separate document a Certificate of Service containing the names and addresses of the parties served, the manner of service, the name and address of the server, and the date of service.

WHEREFORE, ASARCO respectfully requests that the Court enter an order granting the Motion and granting such other and further relief as is just and proper.

Dated: February 12, 2007

Respectfully submitted,

**BAKER BOTTS L.L.P.**

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**ORDER AUTHORIZING ASARCO LLC TO ENTER INTO  
CONTRACT FOR 2007 CLEANING AND DEMOLITION PROJECT  
AND CAMU-PHASE 2 CELL PROJECT IN EAST HELENA, MONTANA**

Upon consideration of the Motion for Order Authorizing ASARCO LLC to Enter into Contract for 2007 Cleaning and Demolition Project and CAMU-Phase 2 Cell Project in East Helena, Montana (the "Motion"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

**ORDERED** that ASARCO is authorized, in its discretion, to enter into a contract for the work at the East Helena, Montana smelter plant, as described in the Motion, with the entity that submits the best and lowest bid, as determined by ASARCO, in consultation with the Official Committee of Unsecured Creditors appointed in its bankruptcy case (the "ASARCO Committee"); and it is further

**ORDERED** that ASARCO is authorized, in its discretion, to order extra work or initiate changes in the work by altering, adding to, or deducting from the work, in consultation with the ASARCO Committee, without need of additional Court order; and it is further



**ORDERED** that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated:

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**RICHARD S. SCHMIDT**  
**UNITED STATES BANKRUPTCY JUDGE**